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United States of America

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	Criminal Case No. 08CR2026-LAB
)	
Plaintiff,	)	Date: October 6, 2008
	)	Time: 2:00 p.m.
v.)	
	)	GOVERNMENT'S RESPONSE AND
GILBERTO CRUZ-VASQUEZ,	)	OPPOSITION TO DEFENDANT'S
	)	MOTIONS TO:
Defendant.)	
	)	(1) COMPEL DISCOVERY
)	
)	
	)	(2) FILE FURTHER MOTIONS.
)	
	)	TOGETHER WITH STATEMENT OF
	)	FACTS, MEMORANDUM OF POINTS
	)	AND AUTHORITIES.
)	

COMES NOW, the plaintiff, UNITED STATES OF AMERICA, by and through its counsel KAREN P. HEWITT, United States Attorney, and ALESSANDRA P. SERANO, Assistant U.S. Attorney, and hereby files its Response and Opposition to the motions filed on behalf of defendant GILBERTO CRUZ-VASQUEZ ("Defendant") which is based upon the files and records of this case.

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I**STATEMENT OF THE CASE**

On June 18, 2008, a federal grand jury for the Southern District of California returned a single-count Indictment charging Defendant with attempted entry of a deported alien, in violation of 8 U.S.C. §1326(a) and (b).

II**STATEMENT OF FACTS****A. THE OFFENSE**

On April 6, 2008, at approximately 6:10 p.m., United States Border Patrol Agent Arguello was performing line watch duties in an area called "The Amsod Field" which is located four miles west of the San Ysidro Port of Entry and 300 yards north of the international border. Agent Arguello received a call from the National Guard inside camera operator that a group of individuals running north from the border fence. At approximately 6:15 p.m., Agent Arguello arrived to the area and noticed four persons trying to conceal themselves in the brush, including Defendant Gilberto Cruz-Vasquez. All four persons including the defendant admitted to being citizens of Mexico with no documents allowing them to enter or remain in the United States. Defendant stated he and the others just climbed over the border fence. All four persons were arrested and taken to the Imperial Beach Station for processing.

Records checks revealed Defendant had a criminal history and was previously deported. Defendant was given the opportunity to contact the Mexican consulate which he did do. Defendant was advised of his Miranda rights and chose to speak with agents. The entire interview was recorded. Defendant admitted that he was a Mexican citizen who had climbed over the border fence with the purpose of traveling to Los Angeles to see his daughter. He admitted that he did not have any documents allowing him to enter or remain in the United States.

B. Defendant's Immigration and Criminal History

Defendant was previously ordered deported via an order by an immigration judge on September 10, 2001 and removed from the United States to Mexico on September 11, 2001 and April 3, 2008. Defendant was previously convicted of Lewd and Lascivious Conduct on a Minor

in violation of PC §288(a) on October 10, 1990 and sentenced to five months in jail. On January 24, 2008, Defendant was convicted of PC §290, failure to register as a sex offender and sentenced to 6 months in jail.

III

UNITED STATES' MEMORANDUM OF POINTS AND AUTHORITIES

A. THE MOTION TO COMPEL DISCOVERY SHOULD BE DENIED

The Government intends to fully comply with its discovery obligations under Brady v. Maryland, 373 U.S. 83 (1963), the Jencks Act (18 U.S.C. § 3500), and Rule 16 of the Federal Rules of Criminal Procedure. The Government anticipates that most discovery issues can be resolved amicably and informally, and has addressed Defendant's specific requests below.

1. The Government opposes producing the entire A file to defense counsel. However, the Government will review the A file to ensure that all discoverable documents are produced.
2. The Government has turned over all statements made by Defendant, including the recorded post-Miranda interview.
3. The Government has turned over all reports of this offense.
4. The Government is unclear as to what exactly Defendant wants. The Government will continue to comply with all applicable discovery rules.
5. The Government acknowledges its obligations under Brady and will turn over any exculpatory evidence.
6. The Government is unaware of such evidence. However, the Government anticipates calling a fingerprint examiner should this matter proceed to trial.
7. The Government has produced Defendant's rap sheet and conviction documents.
8. The Government is unaware of any such evidence.
9. The Government has turned over all discoverable documents and recordings.
10. The Government will turn over all grand jury transcripts should any witness testify at trial. Otherwise, the transcripts will not be produced.
11. Should the Government intend to use 404(b) evidence, it will give advance notice.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Case No. 08CR2026-LAB

Plaintiff,

v.

CERTIFICATE OF SERVICE

GILBERTO CRUZ-VASQUEZ,

Defendant.

IT IS HEREBY CERTIFIED THAT:

I, ALESSANDRA P. SERANO, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of United States' Response and Opposition to Defendant's Motions on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Ken McMullen, Esq.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 9, 2008.

s/Alessandra P. Serano

ALESSANDRA P. SERANO